

1 **BEFORE THE ARIZONA REGULATORY BOARD**
2 **OF PHYSICIAN ASSISTANTS**

3 In the Matter of

Case No. PA-04-0032

4 **MICHAEL GURNEY, PA.**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR A LETTER
OF REPRIMAND AND PROBATION**

5 Holder of License No. **2576**
6 For the Performance of Health Care Tasks
7 In the State of Arizona.

8 This matter was considered by the Arizona Regulatory Board of Physician
9 Assistants ("Board") at its public meeting on November 17, 2004. Michael Gurney, P.A.
10 ("Respondent") appeared before the Board without legal counsel for a formal interview
11 pursuant to the authority vested in the Board by A.R.S. § 32-2551. The Board voted to
12 issue the following findings of fact, conclusions of law and order after due consideration
13 of the facts and law applicable to this matter.

14 **FINDINGS OF FACT**

15 1. The Board is the duly constituted authority for the regulation and control of
16 physician assistants in the State of Arizona.

17 2. Respondent is the holder of license number 2576 for the performance of
18 healthcare tasks in the State of Arizona.

19 3. The Board initiated case number PA-04-0032 after Respondent informed
20 the Board on June 8, 2004 that he had been arrested for driving under the influence
21 ("DUI") of alcohol on June 6, 2004. Respondent also informed the Board of a previous
22 DUI incident in 1994. Respondent noted that he had not completed the court
23 requirements from this incident.
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1 4. On July 6, 2004, David Greenberg, M.D., the Board's contracted addiction
2 medicine specialist, and Board Staff conducted an investigational interview. During that
3 interview Respondent stated that he had no recollection of the 1994 arrest. Respondent
4 also labeled himself an intermittent binge-type drinker, but denied alcohol dependence.
5 As a result of the investigational interview Dr. Greenberg recommended that Respondent
6 undergo an inpatient evaluation. Respondent complied with this recommendation and
7 underwent an inpatient evaluation at the Betty Ford Center ("Betty Ford") from August 10
8 to August 12, 2004.
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10 5. During the inpatient evaluation, Respondent admitted to the evaluators that
11 he lied to Dr. Greenberg and Board Staff about not remembering his 1994 arrest.
12 Respondent admitted his alcohol dependence and use of marijuana while a teenager that
13 he had not previously disclosed to the Board. Betty Ford reported that Respondent was
14 cooperative during the assessment process. Respondent subsequently underwent
15 inpatient treatment. Betty Ford reported that Respondent was highly motivated
16 throughout the entire treatment process. Respondent's prognosis was reported as good.
17 Since Respondent's discharge from inpatient treatment he has participated in a private
18 monitoring program and the Board has received reports that he is doing well and is
19 compliant.
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21 6. During the Board's investigation Staff discovered that, although Respondent
22 had been charged with a DUI in 1994, he had answered in the negative the question on
23 his 2001 license application regarding whether he had even been charged with violating
24 any State statute. Respondent was noticed of the allegation and he admitted he did not
25 disclose the charge because he feared he would not be granted a license.

1 7. Respondent was asked why he did not complete the requirements of his
2 1994 probation, specifically, the required education. Respondent stated that he wished
3 he knew why he did not complete the education requirement. Respondent stated that he
4 thinks it was his arrogance at the time, but since his recent arrest he went back and
5 completed it.

6 8. Respondent was asked how far back, now that he has completed the
7 treatment process and has some introspection, would he consider he had a problem with
8 substance abuse. Respondent testified that he started drinking at about fourteen or
9 fifteen years of age and it has been relatively consistent since then. Respondent stated
10 that he wished he would have received treatment sooner. Respondent testified that he
11 thinks a big part of his denial was that he had done well in school and there did not seem
12 to be any external consequences.

13 9. Respondent testified that he is actively involved in Alcohols Anonymous, is
14 in private monitoring, has a very supportive recovery group through his church, and has
15 been going to weekly group therapy sessions. Respondent testified that he has been
16 staying very strong in his recovery.

17 10. Respondent was asked if there was anything else in his background that
18 has not yet been disclosed to the Board. Respondent testified that there was not.
19 Respondent thanked for the Board for the opportunity to appear and noted that he is very
20 embarrassed by the circumstances. Respondent testified that going through treatment
21 was an amazing experience and he feels very different than before he went to treatment.
22 Respondent testified that he was very encouraged that he could live a different life and
23 relate a lot better to his patients. Respondent testified that he worked in a psychiatric
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1 facility and has had patients who are in recovery. Respondent noted that he is hopeful
2 that he can bring back some of the techniques and skills he learned to help his patients.

3 CONCLUSIONS OF LAW

4 1. The Board possesses jurisdiction over the subject matter hereof and over
5 Respondent.

6 2. The Board has received substantial evidence supporting the Findings of
7 Fact described above and said findings constitute unprofessional conduct or other
8 grounds for the Board to take disciplinary action.

9 3. The conduct and circumstances above constitute unprofessional conduct
10 pursuant to A.R.S. § 32-2501(21)(d)("[h]abitual intemperance in the use of alcohol or
11 habitual substance abuse;") 32-2501(21)(bb)("[k]nowingly making a false or misleading
12 statement on a form required by the board or in written correspondence or attachments
13 furnished to the board.")

14 ORDER

15 Based upon the foregoing, IT IS HEREBY ORDERED that

16 1) Respondent is issued a Letter of Reprimand for habitual intemperance and
17 for knowingly making a false statement on his license application.

18 2) Respondent is placed on Probation for five years with the following terms
19 and conditions:

20 a. Respondent shall submit quarterly declarations under penalty of perjury on
21 forms provided by the Board, stating whether there has been compliance with all
22 conditions of probation. The declarations shall be submitted on or before the 15th of
23 March, June, September and December of each year, beginning on or before March 15,
24 2005.

25 b.1. Participation. Respondent shall promptly enroll in and participate in the

1 Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physician
2 assistants who are impaired by alcohol or drug abuse. Respondent shall remain in MAP
3 for five years from the effective date of this Order. Respondent's participation in MAP may
4 be unilaterally terminated with or without cause at the Board's discretion at any time after
5 the issuance of this Order.

6 **2. Group Therapy.** Respondent shall attend MAP's group therapy sessions
7 one time per week for the duration of this Order, unless excused by the MAP group
8 therapist for good cause such as illness or vacation. Respondent shall instruct the MAP
9 group therapist to release to the Board, upon its request, all records relating to
10 Respondent's treatment, and to submit monthly reports to the Board regarding attendance
11 and progress. The reports shall be submitted on or before the 10th day of each month.

12 **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-
13 step meetings or other self-help group meetings appropriate for substance abuse and
14 approved by the Board, for a period of ninety days beginning not later than either (a) the
15 first day following Respondent's discharge from chemical dependency treatment or (b) the
16 date of this Order.

17 **4.** Following completion of the ninety meetings in ninety days, Respondent shall
18 participate in a 12-step recovery program or other self-help program appropriate for
19 substance abuse as recommended by the MAP group therapist and approved by the
20 Board. Respondent shall attend a minimum of three 12-step or other self-help program
21 meetings per week.

22 **5. Board-Approved Primary Care Physician.** Respondent shall promptly
23 obtain a primary care physician and shall submit the name of the physician to Board Staff
24 in writing for approval. The Board-approved primary care physician ("PCP") shall be in
25 charge of providing and coordinating Respondent's medical care and treatment. Except in

1 an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP
2 and from health care providers to whom the PCP refers Respondent from time to time.
3 Respondent shall request that the PCP document all referrals in the medical record.
4 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and
5 provide a copy of this Order to that physician. Respondent shall also inform all other
6 health care providers who provide medical care or treatment that Respondent is
7 participating in the Board's rehabilitation program.

8 **6. Medication.** Except in an *Emergency*, Respondent shall take no *Medication*
9 unless the PCP or other health care provider to whom the PCP makes a referral
10 *prescribes the Medication*. Respondent shall not self-prescribe any *Medication*.

11 **7.** If a controlled substance is prescribed, dispensed, or is administered to
12 Respondent by any person other than PCP, Respondent shall notify the PCP in writing
13 within 48 hours. The notification shall contain all information required for the medication
14 log entry specified in paragraph 8. Respondent shall request that the notification be made
15 a part of the medical record. This paragraph does not authorize Respondent to take any
16 *Medication* other than in accordance with paragraph 6.

17 **8. Medication Log.** Respondent shall maintain a current legible log of all
18 *Medication* taken by or administered to Respondent, and shall make the log available to
19 the Board and its Staff upon request. For *Medication* (other than controlled substances)
20 taken on an on-going basis, Respondent may comply with this paragraph by logging the
21 first and last administration of the *Medication* and all changes in dosage or frequency. The
22 log, at a minimum, shall include the following:

- 23 a. Name and dosage of *Medication* taken or administered;
24 b. Date taken or administered;
25 c. Name of prescribing or administering physician;

1 d. Reason *Medication* was prescribed or administered.

2 This paragraph does not authorize Respondent to take any *Medication* other than in
3 accordance with paragraph 6.

4 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or
5 any food or other substance containing poppy seeds or alcohol.

6 10. **Biological Fluid Collection.** During all times that Respondent is physically
7 present in the State of Arizona and such other times as Board Staff may direct,
8 Respondent shall promptly comply with requests from Board Staff, the MAP group
9 therapist, or the MAP director to submit to witnessed biological fluid collection. If
10 Respondent is directed to contact an automated telephone message system to determine
11 when to provide a specimen, Respondent shall do so within the hours specified by Board
12 Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly
13 comply" means "immediately". In the case of a telephonic request, "promptly comply"
14 means that, except for good cause shown, Respondent shall appear and submit to
15 specimen collection not later than two hours after telephonic notice to appear is given.
16 The Board in its sole discretion shall determine good cause.

17 11. Respondent shall provide Board Staff in writing with one telephone number
18 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis
19 to submit to biological fluid collection. For the purposes of this section, telephonic notice
20 shall be deemed given at the time a message to appear is left at the contact telephone
21 number provided by Respondent. Respondent authorizes any person or organization
22 conducting tests on the collected samples to provide testing results to the Board and the
23 MAP director.

24 12. Respondent shall cooperate with collection site personnel regarding
25 biological fluid collection. Repeated complaints from collection site personnel regarding

1 Respondent's lack of cooperation regarding collection may be grounds for termination
2 from the program.

3 **13. Payment for Services.** Respondent shall pay for all costs, including
4 personnel and contractor costs, associated with participating in the Monitored
5 Aftercare Program at time service is rendered, or within 30 days of each invoice
6 sent to Respondent.

7 **14. Examination.** Respondent shall submit to mental, physical, and medical
8 competency examinations at such times and under such conditions as directed by the
9 Board to assist the Board in monitoring Respondent's ability to safely perform as a
10 physician assistant and Respondent's compliance with the terms of this Order.

11 **15. Treatment.** Respondent shall submit to all medical, substance abuse, and
12 mental health care and treatment ordered by the Board, or recommended by the MAP
13 director.

14 **16. Obey All Laws.** Respondent shall obey all federal, state and local laws, and
15 all rules governing the practice of medicine in the State of Arizona.

16 **17. Interviews.** Respondent shall appear in person before the Board and its
17 Staff and committees for interviews upon request, upon reasonable notice.

18 **18. Address and Phone Changes, Notice.** Respondent shall immediately
19 notify the Board in writing of any change in office or home addresses and telephone
20 numbers. Respondent shall provide Board Staff at least three business days advance
21 written notice of any plans to be away from office or home when such absence would
22 prohibit Respondent from responding to an order to provide a biological fluid specimen or
23 to communications from the Board. The notice shall state the reason for the intended
24 absence from home or office, and shall provide a telephone number that may be used to
25 contact Respondent.

1 **19. Relapse, Violation.** In the case of chemical dependency relapse by
2 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent
3 shall promptly enter into an Interim Consent Agreement that requires, among other things,
4 that Respondent not perform healthcare tasks until such time as Respondent successfully
5 completes an inpatient or residential treatment program for chemical dependency
6 designated by the Board or Staff and obtains affirmative approval to return to performing
7 healthcare tasks. Prior to approving Respondent's request to return to performing
8 healthcare tasks, Respondent may be required to submit to witnessed biological fluid
9 collection, undergo any combination of physical examination, psychiatric or psychological
10 evaluation and/or successfully pass the special purpose licensing examination or the
11 Board may conduct interviews for the purpose of assisting it in determining the ability of
12 Respondent to safely return to performing healthcare tasks. **In no respect shall the**
13 **terms of this paragraph restrict the Board's authority to initiate and take disciplinary**
14 **action for violation of this Order.**

15 **20. Notice Requirements.**

16 **(A)** Respondent shall immediately provide a copy of this Order to all
17 supervising physicians, employers and all hospitals and free standing surgery centers at
18 which Respondent currently performs healthcare tasks. Within 30 days of the date of this
19 Order, Respondent shall provide the Board with a signed statement of compliance with this
20 notification requirement. Upon any change in supervising physician or employer or upon
21 the granting of privileges at additional hospitals and free standing surgery centers,
22 Respondent shall provide the supervising physician, employer, hospital or free standing
23 surgery center with a copy of this Order. Within 30 days of a change in supervising
24 physician, employer or upon the granting of privileges at additional hospitals and free
25 standing surgery centers, Respondent shall provide the Board with a signed statement of

1 compliance with this notification requirement.

2 (B) Respondent is further required to notify, in writing, all supervising
3 physicians, employers, hospitals and free standing surgery centers at which Respondent
4 currently has or in the future gains employment or performs healthcare tasks, of a
5 chemical dependency relapse, use of drugs or alcohol in violation of this Order and/or
6 entry into a treatment program. Within seven days of any of these events Respondent
7 shall provide the Board written confirmation of compliance with this notification
8 requirement.

9 (C) Respondent shall immediately submit to the Board under penalty of
10 perjury, on a form provided by the Board, the name(s) and address(es) of all supervising
11 physicians, employers and all hospitals and free standing surgery centers at which
12 Respondent currently performs healthcare tasks. Respondent is further required to, under
13 penalty of perjury, on a form provided by the Board, immediately notify the Board of any
14 changes in supervising physicians, employment and of any hospitals and free standing
15 surgery centers at which Respondent performs healthcare tasks after the effective date of
16 this Order.

17 21. **Public Record.** This Order is a public record.

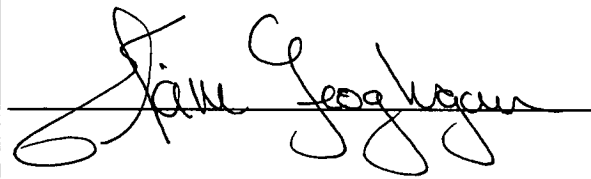
18 22. **Out-of State.** In the event Respondent resides or practices as a physician
19 assistant in a state other than Arizona, Respondent shall participate in the rehabilitation
20 program sponsored by that state's medical licensing authority or medical society.
21 Respondent shall cause the other state's program to provide written reports to the Board
22 regarding Respondent's attendance, participation, and monitoring. The reports shall be
23 due on or before the 15th day of March and September of each year, until the Board
24 terminates this requirement in writing.

1 Original of the foregoing filed this
2 7th day of MARCH, 2005 with:

3 Arizona Regulatory Board of
4 Physician Assistants
5 9545 East Doubletree Ranch Road
6 Scottsdale, Arizona 85258

6 Executed copy of the foregoing
7 mailed by U.S. certified mail this
8 7th day of MARCH, 2005, to:

8 Michael Gurney, P.A.
9 Address of Record

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